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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,753	01/28/2004	Janet W. Rivett	031456/272026	2267
826	7590	10/22/2007	EXAMINER	
ALSTON & BIRD LLP			NUTTER, NATHAN M	
BANK OF AMERICA PLAZA			ART UNIT	
101 SOUTH TRYON STREET, SUITE 4000			PAPER NUMBER	
CHARLOTTE, NC 28280-4000			1796	
			MAIL DATE	DELIVERY MODE
			10/22/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/766,753

Applicant(s)

RIVETT ET AL.

Examiner

Nathan M. Nutter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 15-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-14 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group I, claims 1-14, in the reply filed on 1 May 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). This is added to complete the restriction requirement.

### ***Oath/Declaration***

The Declaration of Miranda filed 3 October 2007 has been considered, but is not deemed to carry any patentable weight. The Declaration appears to be essentially opinion without any evidence to actually show what is asserted, either in the reference to Zen et al or by any comparative testing. As such, little weight can be provided by the Declaration.

### ***Response to Amendment***

In response to the amendment filed 03 October 2007, the following is placed in effect.

The rejection of claims 1-14 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, is hereby expressly withdrawn.

The rejection of claims 1-7 and 10-12 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Moriya et al (US 4,918,133), is hereby expressly withdrawn.

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### ***Claim Objections***

Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 102/103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-7 and 10-12 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Zen et al (US 2002/0128392).

The patent to Zen et al (US 2002/0128392), discloses the production of a polymer blend composition that may comprise a cyclic olefin copolymer (denoted as component (C) in the patent) which may comprise norbornene or bicyclo[2,2,1]-2-hept-2-ene, as recited in instant claims 1 and 3, and the acyclic monomer, ethylene or propylene, as recited in claims 1, 3, 4 and 5, with a styrenic elastomer copolymer (denoted as component (A) in the patent) that includes a saturated alkene monomer, including ethylene and propylene, of claims 6 and 7. See Paragraphs [0016]-[0018].

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Note the Abstract for the broad disclosure. Further, note paragraphs [0031]-[0045] and the many formulae for the cyclic olefin monomer. Note paragraphs [0014]-[0017] for the elastomer constituent.

At paragraph [0010], the reference teaches a styrenic copolymer content of "1 part to 95 parts by weight of component (A),...and 1 part to 95 parts by weight of component (C)," which range embraces the range recited in instant claims 10 and 11. As regards the recitations of haze values and peak impact energy in claims 1 and 12, nothing is recited in the claims which might be construed as different from that disclosed by the reference with regards to the constituents, their respective monomer contents, or compositional limitations which would produce these characteristics. As such, the artisan following the teachings of the reference would have a high level of expectation of success to achieve these characteristics.

Though the reference is silent with regard to the difference in refractive indices of the two components, there is nothing disclosed in the reference to indicate the resins are index matched. As such, the reference would embrace compositions having these differences in refractive index. Nothing unexpected or surprising has been shown on the record.

### ***Response to Arguments***

Applicant's arguments filed 16 February 2007 have been fully considered but they are not persuasive.

With regard to the rejection of claims 1, 3-7 and 10-12 over Zen et al (US 2002/0128392), applicants have not shown why the composition of the reference would

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not have the characteristics claimed. Nothing in the claims is recited that would provide the characteristics. As such, it must be assumed that the claim recitations of inclusion for constituents is sufficient. A skilled artisan would expect the characteristics to be present. Nothing on the record, or in the reference would indicate otherwise.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

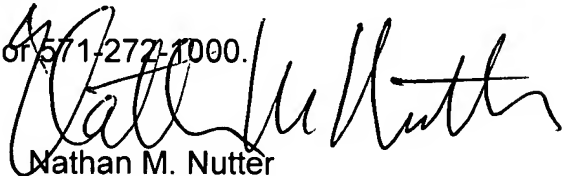
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Nathan M. Nutter  
Primary Examiner  
Art Unit 1796

nmn

18 October 2007